

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
<p>OKLAHOMA BEVERAGE COMPANY,</p> <p>v.</p> <p>DR. PEPPER LOVE BOTTLING COMPANY (of Muskogee), a Partnership consisting of K.C. Love, Sr. and Violet Mills Love of Muskogee, Oklahoma; DR. PEPPER LOVE BOTTLING COMPANY (of Bartlesville), a Partnership consisting of John H. Love, Delia Love and Kenneth Love of Bartlesville, Oklahoma; JOHN H. LOVE, an individual residing in Bartlesville, Oklahoma; DELIA LOVE, an individual residing in Bartlesville, Oklahoma; KENNETH LOVE, an individual residing in Bartlesville, Oklahoma; K.C. LOVE, SR., an individual residing in Muskogee, Oklahoma; and, VIOLET MILLS LOVE, an individual residing in Muskogee, Oklahoma.</p>	<p>For plaintiff:</p> <p>Jerry J. Dunlap (239-7061) William R. Laney Dunlap, Laney, Hessin, Dougherty & Coddling Suite 510 Fidelity Plaza Oklahoma City, Oklahoma 73102</p> <p style="text-align: right; margin-right: 50px;">238 10 PM PI 74119</p> <p>For defendant:</p> <p>James R. Head (all defs.) 212 Beacon Bldg. Tulsa 74103 (584-4187)</p> <p>Charles Gotwals 2010 Fourth Natl. Bldg. Tulsa, Okla. 74119 582-9201</p> <p>Julius R. Lunsford (on appeal) Beveridge, DeGrandi, Kline & Lunsford Suite 2012, 400 Colony Square 1201 Peachtree St., NE, Atlanta, Georgia 30361</p>

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed 5-1-74	Clerk		4/16/74	Dunlap	1500	
			4-18-74	C/D #41		15 00
J.S. 6 mailed 7-1-78	Marshal					
Basis of Action: Declaratory Judgment - Trademark (registered)	Docket fee					
	Witness fees					
Action arose at:	Depositions					

DATE	PROCEEDINGS	Date Order or Judgment Noted
4-16-74	1. COMPLAINT filed, SUMMONS issued.jj	
4-24-74	SUMMONS, ret. & filed: served Violet Mills Love, K. C. Love, Sr., and K. C. Love, Sr., partner, Muskogee, Ok. 4-23-74; served Kenneth Love, Delia Love, John H. Love, and John H. Love, partner, at Bartlesville, Ok. 4-19-74. (USM \$35.28)g	
4-29-74	2. Notice to take deposition upon oral examination ¶6 Dr. Pepper Love Bottling Co. of Muskogee Dr. Pepper Love Bottling Co. of Bartlesville Violet Mills Love James R. Head Kenneth Love Delia Love K. C. Love, Sr. John H. Love	
5-8-74	3. Motion of all defs. to drop parties def., to transfer this case to E.D. of Okla., and to provide addl. time to ans. complaint, w/brief and affidavit in support thereof attached, filed.rm	ds c 6 2
5-10-74	4. Deft's Motion to Stay Taking of Examination and Enlarging Time of Notice of Taking Deposition, filed. (o to J) e	
5-13-74	5. Memorandum of Law in Opposition to Defendants' Motion to Transfer Action to the Eastern District of Oklahoma at Muskogee, filed. e	
5-13-74	6. Memorandum of Law in Opposition to the Defts' Motion to Drop Certain Parties Defendant, filed. e	
5-13-74	Case called for hrg. on Dfts mot. to drop parties deft., to transfer case to E.D. of OK, and to provide additional time to answer. Deft. is granted 10 days to respond to motion. Court will rule summarily. Re:Deft's mot to stay taking of depositions, Court denies said motion. Court grants deft. until June 15, 1974, to answer. (LB-J)v	
5-22-74	7. Plaintiff's request under Rule 34 for production of documents and things, filed. ds	
5-28-74	8. Notice to take deposition upon oral examination, filed. hm	
6-6-74	9. Order, filed, that defts' motions to dismiss as to certain defts. and to transfer action to East. Dist. of Okla. should be denied, and it is so ordered; defts. may reassert said motions at any time. (LB-J)hm (copies mailed)	
6-7-74	9 Deposition of Kit Carson Love on behalf of pltf., filed. (\$288.)g	
6-7-74	10 Deposition of John H. Love on behalf of pltf., filed. (\$106.50)g	
6-17-74	11. Defts' application for additional time to answer complaint, filed.hm	
6-24-74	12. Order, filed, granting defts. until 7-15-74 to answer complaint or otherwise plead. (LB-J)hm (copies mailed)	
7-12-74	13. Pltf.'s Request for Admissions under Rule 36, filed.k	

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DATE	PROCEEDINGS	Date Order or Judgment Noted
7-15-74	14. ANSWER AND COUNTERCLAIM of Deft's filed. b	
7-22-74	15. REPLY to counterclaim of defendants, filed. g	
7-23-74	Deposition of James E. Brim on behalf of Defts. taken 6-14-74 by Frank L. Peterson, CSR, w/ fee of \$136.50, filed.k	
7-29-74	16. Pltf's second set of requests for admissions under Rule 36, filed.k	
8-7-74	17. Objs. of defs. to pltf. req. for admissions, filed. rm	
8-15-74	18. Ltr., filed, 8/13/74, from def. to pltf. counsel, re stipulation & agree. concerning pltf. 1st & 2nd reqs. for adm. rm	
8-19-74	Case set for pre-trial 9-10-74 at 9:30 a.m. (LB-J)hm	
8-30-74	19. Defts.' Response to Pltf's First & Second Request for Admissions, fld. v	
9-9-74	20. Pltf's motion for order compelling discovery under Rules 36 & 37 of Fed. Rules of Civil Procedure, filed. g	
9-9-74	21. Memorandum in support of pltf's mot. for order compelling discovery, filed. g	
9-10-74	Case called for pre-trial hearing and stricken by agreement of parties. Pltf. announces filing of motion for order compelling discovery under Rules 36 & 37 of FRCP. Deft. directed to answer requests for admissions and pre-trial passed until after 12-1-74. (LB-J)hm	
10-7-74	22. Pltf's Request for Admissions under rule 36, filed. lm	
10-7-74	23. Pltf's Third Request for Admissions, filed. lm	
11-5-74	24. Defts' response to pltf's third req. for admissions, filed. g	
11-25-74	Case set for pre-trial hearing 12-17-74 at 9:30 a.m. (LB-J)hm	
12-17-74	Pre-trial hearing held. Statements made. Pltf. to prepare pre-trial order within 15 days and case to be set for non-jury trial. (LB-J)hm	
1-3-75	Ordered by the Court that an extension of time for filing the pre-trial order is granted and pre-trial order to be filed on or before 1-15-75. (LB-J)hm	
1-10-75	25. Request of defs. for production of documents, filed. rm	
1-14-75	26. Deposition of George H. Weaver on behalf of defts. taken before George C. Hickerson, CSR, (\$ 75.75), lm	
1-23-75	MO: Ordered by the Ct. that this case is set for non-jury trial for 1:30 p.m., 1/31/75. (LB_j)rm - notice	
1-27-75	27. PRE-TRIAL ORDER, filed. (LB-J)rm	
1-27-75	28. List of pltf. & def. witnesses, filed. rm	
1-27-75	29. List of def. exhibits, filed. rm	
1-27-75	30. List of pltf. exhibits, filed. rm	
1-29-75	MO: Ordered by the Ct. that this case is stricken from non-jury docket of 1/31/75 to be reset at later date by Ct.(LB-J)rm-parties notified by phone	

DATE	PROCEEDINGS	Date Order or Judgment Note
3-4-75	MO: ORDERED BY THE Court that this case is set for Nonjury Trial on 3-25-75 at 9:00 A.M. (LB-J)v -notices mld.	
3-21-75	MO: Ordered by the Court that this case is stricken from the Nonjury Docket of 3-25-75 to be reset at a later date. (LB-J)v -attys. call.	
5-15-75	MO: Ordered by the Court that this case is set for Non-Jury trial on Tuesday, June 3, 1975, at 9:30 a.m. (LB-J)rm - notices mailed	
6-3-75	MO: Ordered by the Court that this case is stricken from non-jury trial docket of 6/3/75 until further notice by Ct. (LB-J)rm	
10-1-75	MO: Case set for non-jury trial for 9:30 a.m., Tuesday, 11/4/75.(LB-J)rm notices	
11-3	31. Pltf's Pre-Trial Memorandum, filed. lm	
11-3-75	32. Def. pre-trial brief, filed. rm	
11-4-75	Non-jury trial held. Parties present and rep. by counsel of record. Parties make opening statements; present case in chief w/testimony of witnesses. Pltf. & def. exhibits admitted. Parties rest and present closing argument. Parties given to 12/1/75 to present the court with proposed FF/CL. Upon req., further oral argument may be had by parties or Ct. will enter FF/CL & Judgment.(LB-J)(F.Sickles_CR)rm	
11-4-75	Trial exhibits, filed. rm	
12-8	MO: Case set hrg. argument and disposition for Tuesday, 12/16/75, at 9:00 a.m. (LB-J)rm - notices	
12-16	Hearing held on final argument after non-jury trial. Parties rep. by counsel of record. Def. reoffers exhibits not previously admitted in case. Ct. rules all pertinent exhibits will be considered and included in case of appeal. Oral argument heard. Asse taken under advisement and Ct. will enter formal FF/CL and judgment at later date. (LB-J)(F. Sickles-CR)rm	
12-19 33	Findings of Fact and Conclusions of law, filed and entered.(LB-J)rm copies mailed	
12-19 37	Judgment, filed and entered, that pltf. have general judg. against defs., Dr. Pepper Love Bottling Co. of Muskogee, consisting of K. C. Love, Sr. and Violet Mills Love, et al.; that Patents of Trademark Registration No. 617,924 to defs. be and same is hereby void and vacated, set aside and held for naught; that defs. are enjoined and restrained from interfering with or obstructing pltf. operation or use of Trademark 617,924; that pltf. may file herein its claim for damages for unfair competition and inducement of breach of contract against defs.; thereafter defs. will have opportunity to file their answer & Ct. will hear and determine issue of damages as provided by law; that costs of this litigation be borne by defs. herein. w/ 0 attached jj (LB-J)rm - copies mailed	
12-24 35A	35 Defts. Appl. for Addl. Time to File Mtn. for New Trial or Amend, filed./	
12-26-75 1976	Bill of Costs on Oklahoma Beverage Co., set for hearing on January 6, 1976 at 10:00 a.m., filed.tc	
1-6-76	Bill of Costs, filed. Taxed in the amount of \$88.75. (JCS-CC)tc	
1-6-76	36. Order, filed, granting deft. until 1-8-76 to file Mtns for New Trial and/or Amend the Judgment.(LB-J)jj copies mld.	
1-7-76	37. Defts' combination mo. and brief in support of new trial (FRCP Rule 59), filed. ph (copy nld to 12-19-75)	

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DATE	PROCEEDINGS	Date Order or Judgment Noted
1976 1-12	38. Pltf. obj. to taxation of costs and brief in support thereof, filed. rm	
1-14	MO: Case set for hearing on def. mo/new trial and pltf. obj. to taxation of costs for Monday, 1/19/76, at 9:00 a.m.(LB-J)rm parties notified by phone and notice	
1-19	Case called for hearing on def. mo/new trial and pltf. obj. to taxation of costs. Statements made by counsel. Judgment modified in open Ct. to reflect that the trademark was 'recorded' with the commissioner. Mo/new trial overruled by Ct. Pltf. obj. to taxation of costs by clerk sustained. Additional costs to be taxed in the case in the amt. of \$376.50 in favor of pltf. Pltf. directed to prepare formal order. (LB-J)rm	
1-28	39 Order, filed and entered that Defts' mo. for new trial be denied. (LB-J)ph cps mld	
1-30	40. Order, filed, granting pltf. obj. to taxation of costs and directing that pltf. recover from defs. total sum of \$444.90. (LB-J)rm-copies mailed	
2-17	41. Notice of appeal by defs. from orders of 1/27 and 1/29/76, filed. rm (copy to USCA)	
2-23	42. Defts' cash security for costs on appeal, filed.k	
2-23	43. Defts' application to abate further trial or hrg. pending results of appeal from Judgment of 12-19-75 and subsequent orders, filed.k	
2-23	44. Brief in support of defts' appl. to abate further hearings, filed.k <i>clg.</i>	
3-1	Minute: Inasmuch as notice of appeal has been filed in this case, the Court has no jurisdiction. The Court will not conduct hearings in this case during the pendency of the appeal. (LB-J)rm <i>(phone notice)</i>	
3-1	45. Stipulation of parties to withdraw physical exhibits by defs. and substitute photographs thereof, filed. rm	
3-5	MO: Upon stipulation of parties to withdraw physical exhibits by defs. and substitute photos. thereof, it is so ordered.(LB-J)rm (Mr. Head notified by phone)	
3-22	46. Receipt of physical exhibits by atty. for defs., filed. rm	
3-24	47. Order, filed, extending time to file and docket appeal to 5/18/76.(LB-J)rm-copies to counsel and USCA	
3-26	48. Substitution of photographic exhibits, filed (photos attached)rm	
4-5	Partial record on appeal (Vol. I only) transmitted to USCA per their request. rm	
5-24	49. Copy of Order from 10th Circuit, granting ext. of time to 6/30/76 to transmit record on appeal, filed. rm	

DATE	PROCEEDINGS	Date Order or Judgment Noted
6-16-76	Transcript of trial proceedings; argument and further proceedings; motion for new trial and other matters, had on November 4, 1975, December 16, 1975 and January 19, 1976, filed.(F. Sickles-CR)rm	
6-17	Original record on appeal (Suppl. Vol. I,II,III) transmitted to USCA.rm	
8-11-77	Mandate & Opinion of USCA, affirming judgment 12-19-75, filed and spread of record. g	
8-12	MO: The plaintiff in this case has claimed the right to recover damages for unfair competition and inducement of breach of contract against the defts. IT IS ORDERED, that the plaintiff, as prevailing party after appeal, file an itemized statement and application for claimed damages within ten (10) days from this date; that thereafter the defts. are granted 20 days to respond; and thereafter the matter will be set for hearing and disposition.(LB-J)rm-letter	
8-19	Orig. Record returned from 10th Circuit this date. v	
8-22	Pltf. appl. for and statement of damages. fld. ho	
9-9	Defts. answer to pltf. appl. for and statement of damages, filed. rm	
11-17	MO: Case set for hearing on pltf. appl. for damages for Wed., 11/30/77 at 9:30 a.m. (LB-J)rm - notices	
11-18	MO: Ordered that case is stricken from docket of 11/30/77, to be reset at later date by ct., due to conflict of Bar Assn. meeting in Okla. City. (LB-J)rm-letter	
1-5-78	MO: Case set for hearing on pltf. appl. for damages for Thurs., 1/19/78, at 9:30 a.m.(LB-J)rm-notices	
1-9	Notice by pltf. of taking deposition of K. C. Love on 1/13/78, filed.rm	
1-10	Motion for SJ of defts., filed. rm	
1-10	Brief in support of defts. mo/SJ, filed. rm <i>cc: pl, to: L</i>	
1-12	MO: Ordered that hrg. on pltf. appl. for damages is stricken and case set for hrg. on defts. mo/SJ and pre-trial conf. for 1/19/78 at 9:30 a.m. (LB-J)rm-amended notices	
1-13-78	MO: Case stricken from docket on 1-19-78 and <u>reset</u> on Jan. 26, 1978, at 9:30 a.m., for hrg. on Defts.' mot. for S/J and pretrial conference. (LB-J)v -parties notified by phone.	
1-17	Memo brief of pltf. in opposition to defts. mo/sj, filed.rm(copy to LB)	
1-23	MO: Case stricken from docket of 1/26/78, to be reset at later date by the court. (LB-J)rm-parties notified by phone	
1-26	MO: Case reset for hrg. on defts.' mo/SJ and pt conf. for Thurs., 2/9/78 at 9:30 a.m.(LB-J)rm-notices	
1-31	MO: Case reset for hrg. for 1:30p.m., Thurs., 2/9/78 instead of 9:30 a.m. (LB-J)rm-parties phoned	
2-7	MO: Case reset for hrg. on def. mo/SJ & pt conf. for Fri., 2/24/78 at 9:30 a.m.(LB-J)rm-notices	

DATE	PROCEEDINGS	Date Order or Judgment Noted
2-24-78	Hearing held on deft. mo/SJ AND pretrial conf. Counsel present. State-ments made. Defts. mo/SJ overruled, wo/prej. Deft. objs. to pltf. appl. for damages as it refers to attys. fees - ruling on appl. reserved. Pltf. directed to prepare pretrial order in 10 days. Case to be set for trial if parties can't agree on settlement.(LB-J) (F.Sickles-CR)rm	
3-7-78	Defts. mot. for additional pretrial, fld. ho	
3-7-78	Defts. memorandum brief in supp. of mot. for additional pretrial, fld. ho	
3-7-78	Defts. mot. to amend interlocutory order, fld. ho	
3-7-78	Defts. brief in supp. of mot. to amend interlocutory order, fld. ho	
3-14-78	Memo. of pltf. in opposition to mo/amend interlocutory order,filed.rm	
3-14-78	Memo. of pltf. in opposition to mo/addl. pretrial of deft.,filed.rm	
4-28	MO: Ordered by the Court that defts. mo/addl. pretrial and mo/amend interlocutory order is overruled, and case is set for disposition for Wed., 5/10/78 at 9:30 a.m.(LB-J)rm-letter & notice	
5-10	Hearing held on pltf. req. for damages & atty fees. Statements made. Req. is denied without prejudice. Pltf. presents case with testimony of witnesses, James Brim and Russell Harbaugh, Jr. and rests. Pltf. Exhs. 1-4 admitted into evidence. Deft. rests. Arguments had. Pltf to prepare FF/CL within 10 days; deft. 10 days thereafter to respond. Case may be set for further hrg. Pltf. counsel granted permission to withdraw exhibits and Pltf. Ex. 1 to be substituted w/copy.(LB-J)rm (B. Bailey-Deputy)(F. Sickles-CR)	
5-22	Pltf. proposed FF/CL & judgment, filed. rm (copy to LB)	
5-22	Orig. exhibits from 5/10/78 hrg. received from pltf.counsel.rm	
5-26	Motion of defts. for ext. of time to respond to pltf. FF/CL,filed.rm(O)	
6/2	Order, filed, granting Defts. an ext. of time of 20 days from 5/19/78 to file a response to Pltf.'s FF/CL. (LB-J)v -cps. mld.	
6/5	Letter from pltf. counsel that exhibits retd. 5/22/78 also included copies of statements to defts. which were pd. by deft. checks, Pltf. Exh. 1, same being submitted at req. of Judge Bohanon. rm	
6-8	Defts. proposed FF/CL, filed. rm	
6-22	Findings of Fact and Conclusions of Law, filed and entered.(LB-J)rm-copies md	
6-22	Judgment, filed and entered, that pltf. have judg. against defts., Dr. Pepper Love Bottling Company of Muskogee, consisting of K. C. Love, Sr. & Violet Mills Love, for damages in sum of \$5607.10; and atty. fees in sum of \$22,500, w/int. as provided by law; that pltf.'s claim for damages for trademark infringement & loss of profits are dismissed without prejudice.(LB-J)rm-copies mailed	
7-3	Mo/new trial by defts., filed.rm	
7-3	Brief in support of mo/new trial,filed.rm - copy to LB	
7-17	Pltf. partial response to defts. mo/new trial,filed.rm-copy to LB	
7-18	Transcript of hrg. on final disposition,had 5/10/78,filed.rm(F.Sickles-CR)	

DATE	PROCEEDINGS	Date Order or Judgment Noted
1978 7-25	Order, filed, that FF/CL and judg. entered 6/23/78 be stayed; that matter is set for hrg. 8/7/78 at 10 a.m., Ctrm. No. 2, Fed. Cthouse, Okla. City for final hrg. relating to FF/CL as to costs.(LB-J)rm-copies mailed	
7-31	Motion of defts. for hearing to be held in Northern District, w/brief, filed. rm	
8-1	MO: Ordered by the Ct. that defts. mo/hr. to be held in District is granted. Case heretofore set for hrg. in Okla. City is reset for hrg. in Tulsa, Ctrm. #3, for Mond., 8/7/78 at 2 p.m.(LB-J)rm	
8-7	Hearing held re FF/CL. Counsel present. Statements made. Deft. objs. to FF/CL and judg. overruled. FF/CL & judg. to be reinstated upon entry of formal order by court. Appeal time to commence at filing of new order of reinstatement. Deft. mo/new trial overruled.(LB-J)rm (L. Walker-CR)	
8-9	Order, filed and entered, that FF/CL and judg. heretofore rendered are reinstated in all things, except that time for appeal shall begin with the filing of this Order.(LB-J)rm-copies mailed	
8-11	Motion to amend and correct order entered 8-9-78,w/brief,fld.ra (copy)	
8-15	Order nunc pro tunc, filed and entered, that FF/CL & jd. of 6/22/78 be reinstated in all things; that judg. in favor of pltf. represents a total judg. of \$28,107.10, which shall draw int. as provided by law from and after 6/22/78; further that time for appeal shall begin to run with filing of this order.(LB-J)rm-copies mailed	
8-16	Reporter's transcript of hearing held 8/7/78, filed.(Linda A.Walker-CSR)(pp. 1-19)rm	
8-25	Notice of appeal by deft. from judg. of 6/22/78 and order of 8/15/78, filed. rm (copy to counsel & USCA)	
8-25	Motion of defts. for stay of execution pending appeal,filed.rm (copy to counsel & USCA)	
9-19	Appeal record (3 vols) transmitted to USCA.rm	
9-25	Letter from 10th Circuit, assigning No. 78-1771. rm	
10-12	Escrow Agreement between parties, filed, as security to cover judg. & costs. rm	
11-13	At req. of parties, Supplemental Vol. I transmitted to 10th Circuit.rm	
11-16	Order, filed, granting defts. mo/stay, pursuant to Rule 62 of FRCP. (LB-J)rm-copies mailed	
9-5-80	MANDATE & OPINION of 10th Circuit, affirming. rm	
9-23-80	RELEASE AND SATISFACTION OF JUDGMENT.mm	
10-1-80	APPEAL RECORD (3 vols., plus Suppl. Vol. I) received from 10th Cir.rm	

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR

PLAINTIFF	DEFENDANT	DOCKET NO. _____
OK BEVERAGE COMPANY	LOVE BOTTLING CO, et al	PAGE <u>9</u> OF <u>5</u> PAGES

DATE	NR.	PROCEEDINGS
10-9-80		DEPOS returned to respective parties.a
4-26-82		REQUEST to disburse cost bond on appeal.(0 as part of applic.)a
4-27		ORDER that Clk dispense \$250.00 to James R. Head.(HDC-J)jc(c/Head)
3-4-83	--	EXHIBITS returned to counsel. hm

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR

PLAINTIFF	DEFENDANT	DOCKET NO. _____ PAGE ____ OF ____ PAGES
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DATE	NR.	PROCEEDINGS
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DC-111A REV. (1/75)